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In re Application of
Hargreaves et al.
Application No.: 10/589,596
PCT No.: PCT/NL2005/000111
Int. Filing Date: 16 February 2005
Priority Date: 17 February 2004
Attorney Docket No.: 207,685
For: Laminated Dough Products And The Use Of Protease :
At The Outer Surface To Improve Crispness Thereof After...:

DECISION

This is with regard to the "Petition To Withdraw Notification Of Abandonment" filed on 27 October 2008.

BACKGROUND

This international application was filed on 16 February 2005, designated the United States, and claimed an earliest priority date of 17 February 2004. The International Bureau transmitted a copy of the published international application to the USPTO on 25 August 2005. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 17 August 2006. Applicants timely filed *inter alia* the basic national fee on 14 August 2006.

On 04 February 2008, a Notification Of Missing Requirements (Form PCT/DO/EO/905) was mailed to counsel, requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b) and the surcharge under 37 CFR 1.492(h).

On 09 October 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Form PCT/DO/EO/905 mailed on 04 February 2008.

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment, on the basis of alleged non-receipt of the Notification mailed on 04 February 2008. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement).

Petitioner states that "The Notification of Missing Requirements of February 4, 2008 was not received by Ableman, Frayne & Schwab, counsel for Applicants herein." This statement satisfies requirement (1).

Regarding requirement (2), petitioner does not explicitly state that a search of the file jacket and docket records indicates that the Office action was not received. Petitioner has provided a "Declaration by Mary Washburn..." who states in part that "there has been no entry of a Notification of Missing Requirements of February 4, 2008 or any other date in AFS: 207,685, which is U.S. Patent Application No. 10/589,596." She also refers to "a photocopy of the jacket for Docket No. 207,685 which indicates there is no entry of a Notification of Missing Requirements for February 4, 2008."

Concerning requirement (3), petitioner provides copies of docket records showing applications docketed for response between 03 May 2008 and 05 May 2008, three months after the 04 February 2008 mailing date of the Notification. However, the Notification set a two-month period for response; therefore, the non-extended period for response ended on 04 April 2008. Accordingly, the required docket records are those records showing all applications docketed for response on (or about) 04 April 2008. In the absence of such records, it would not be appropriate to conclude that requirement (3) has been satisfied at this time.

DECISION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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